

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MATEO PATISSO,

Plaintiff,

ORDER

11-CV-1996(JS)(ARL)

-against-

LAW OFFICES OF BRUCE E. BALDINGER LLC,
BRUCE E. BALDINGER, HOWARD A. TEICHMAN,
and PAT GALLER,

Defendants.

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APPEARANCES

For Plaintiff: Mateo Patisso, pro se
57 A Hillwood Drive
Huntington Station, NY 11746

For Defendants: Bruce E. Baldinger, Esq.
The Law Offices of Bruce E. Baldinger, LLC
365 South Street
Morristown, NY 07960

SEYBERT, District Judge:

Presently pending before the Court is pro se Plaintiff Mateo Patisso's motion for leave to appeal in forma pauperis. (Docket Entry 37.) Under the Federal Rules of Appellate Procedure, "a party who desires to appeal in forma pauperis" may do so by filing a motion in the district court accompanied by an affidavit that: (1) shows "in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay or to give security for fees and costs," (2) "claims an entitlement to redress," and (3) "states the issues that the party intends to present on appeal." FED. R. APP. P. 24(a)(1).

Mr. Patisso has failed to do that here. He merely filed a "Notice of Motion for Application to Proceed In Forma Pauperus [sic]," stating that "[n]otice is hereby given that Mateo Patisso, Plaintiff in the above action, hereby makes application to proceed in Forma Pauperus [sic] to the Eastern District of New York," and providing Defendants' address. As such, the Court is unable to determine whether Mr. Patisso is in fact indigent and whether his appeal is taken "in good faith," see FED. R. APP. P. 24(a)(3)(A). Therefore, the Court must deny Plaintiff's request. See Frias v. United States, Nos. 09-CV-2537, 01-CR-0307, 2011 WL 832903, at *2 (S.D.N.Y. Mar. 4, 2011).

The Court also notes that Mr. Patisso's application is untimely. Mr. Patisso filed his notice of appeal on December 23, 2011 but never paid the filing fee. So on February 17, 2012, the Second Circuit deemed his appeal in default and "dismissed [it] effective March 13, 2012 unless **by that date** appellant either pays the fee in full, moves for in forma pauperis status in district court or, if the district court has denied in forma pauperis status, moves [the Second Circuit] for in forma pauperis status." (2d Cir. Mandate, Docket Entry 36 (emphasis added).) Yet, Mr. Patisso did not file the pending motion until April 24, 2012--more than a month after the deadline to do so had expired.

CONCLUSION

Accordingly, for the foregoing reasons, Plaintiff's request to proceed in forma pauperis on appeal is DENIED. The Clerk of the Court is directed to mail a copy of this Order to the pro se Plaintiff.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: May 7, 2012
Central Islip, NY